

## Lockey, Heather@CNRA

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**From:** Sadie Graham <sgraham@bart.gov>  
**Sent:** Thursday, March 15, 2018 3:39 PM  
**To:** CEQA Guidelines@CNRA  
**Cc:** vmenott@bart.gov; Mary Wilke; Andrew Tang  
**Subject:** BART comments on Proposed Amendments and Additions to the State CEQA Guidelines  
**Attachments:** 20180315\_BART\_CEQA Comments Final.pdf

Dear Mr. Calfee ,

Thank you for the opportunity to provide comments. Please let us know if you have any questions regarding our comments.

We do have additional input we would like to share regarding the Technical Advisory, and will send them along soon.

Best,

**Sadie Graham**

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Re: BART Comments on *Proposed Amendments and Additions to the State CEQA Guidelines*

Dear Mr. Calfee:

On behalf of the San Francisco Bay Area Rapid Transit District (BART), we welcome this opportunity to provide comments to the California Natural Resources Agency (CNRA) on the proposed amendments and additions to the CEQA Guidelines. Our comments focus on clarifying certain proposed changes.

With 46 transit stations, BART currently provides electric rail transit service to San Francisco, Alameda, Contra Costa, and San Mateo counties and expects to open four new stations in the next few years, including two in Santa Clara County. BART plays an important role in enhancing the region's air quality, land use, economy, and transportation network. On average, BART carries 420,000 riders on weekdays and we expect to see ridership grow to 659,000 by 2035. One rider using BART each weekday (roundtrip) saves 1.4 gallons of gas, resulting in a reduction of CO<sub>2</sub>e emissions by 27 pounds; this translates in BART riders displacing about 360,000 metric tons of CO<sub>2</sub>e per year. At the same time, while transit growth reduces highway congestion and improves regional air quality, such growth also places greater demands on BART's existing core station facilities, some of which are near-capacity for crowding during peak hours.

BART's overall strategic vision is to "support(s) a sustainable and prosperous Bay Area by connecting communities with seamless mobility." BART's Sustainability Action Plan commits to reducing by 24% GHG emissions per passenger associated with access to stations by shifting passengers to greener modes of transportation and developing transit-oriented development (TOD) adjacent to stations.

For these reasons, BART strongly supports many of the proposed amendments and additions to the CEQA Guidelines that recognize public transit systems as an important and environmentally beneficial public resource, and public transit agencies as experts with whom consultation is critical. Specifically, BART is supportive of the proposals to:

1. Utilize automobile vehicle miles traveled (VMT) as the recommended measure for evaluating transportation impacts;
2. Presume that development projects within one-half mile of a major transit stop have less than significant transportation impact;
3. Presume that transportation projects that reduce VMT have less than significant transportation impacts; and
4. Implement the revised Guidelines statewide.

BART's comments on the proposed amendments to the CEQA Guidelines are as follows:

1) Revise § 15064.3(a) to include examples of effects on transit

Section 15064.3(a) currently states "Other relevant considerations may include the effects of the project on transit and non-motorized travel."

BART suggests that Section 15064.3 is revised to read "Other relevant considerations may include the effects of the project on transit (e.g., impeding access, diminishing performance, decreasing safety and security) and non-motorized travel." This language would provide clear examples for lead agencies of the various potential effects projects can have on transit.

2) Revise § 15064.3(b)(1) for consistency with other provisions

The last sentence of § 15064.3(b)(1) states: "Projects that decrease vehicle miles traveled in the project area compared to existing conditions should be considered to have a less than significant transportation impact." BART suggests "considered" be changed to "presumed" so that this sentence is consistent with the preceding sentence and with the first sentence of § 15064.3(b)(2). Using inconsistent language in these sentences may create confusion as to whether OPR intended them to have different meanings, which appears not to be the case.

3) Revise § 15064.3(b)(1) to include adopted future major transit stops

BART suggests that the language in § 15064.3(b)(1) stating that generally, projects within one-half mile of either an "existing major transit stop" be revised to include "existing or adopted future major transit stop". BART believes that transit stops which are not yet existing but which have been adopted by the relevant transit agency should be considered for this purpose. Any stop that has been adopted by a transit agency is reasonably foreseeable under CEQA and thus development near those stops should be able to rely on this presumption as well.

4) Add cross-reference to relevant definitions to § 15064.3(b)(1)

BART suggests that a cross-reference for the definitions of "major transit stop" and "high quality transit corridor" from SB743 be added in § 15064.3(b)(1) in order to provide clarity and consistency between SB743 and the Guidelines.

5) Revise § 15064.3(b)(3) to explain analysis of construction traffic VMT

Section 15064.3(b)(3) adds a new reference to a qualitative analysis of VMT for construction traffic, stating that "[f]or many projects, a qualitative analysis of construction traffic may be appropriate." It is unclear what this type of analysis for construction traffic would consist of and whether it is reasonable or feasible for a lead agency to analyze and mitigate VMT specifically associated with construction traffic, even qualitatively, separate from project siting considerations already taken into account in the analysis of operational VMT impacts. BART requests that either more guidance is provided on how this analysis would be conducted or remove this reference from the proposed Guidelines. In its current form, the language provides little guidance on what would be expected for a VMT analysis of construction traffic, opening up the possibility for litigation over the implementation of this requirement.

6) Revise § 15072(e) regarding consultation with Transit Agencies

BART strongly supports the addition of the following in Section 15072(e) "[t]he lead agency should also consult with public transit agencies with facilities within one-half mile of the proposed project." However, BART suggests clarifying changes to limit the scope of such consultation.

The first change would clarify that this additional consultation applies specifically to projects that are not of statewide, regional, or areawide significance. The existing Guidelines already require transit agency consultation for projects that are of statewide, regional, or areawide significance.

The second change would limit the consultation provision to projects near a smaller subcategory of transit facilities, transit stops or stations. As stated in Guidelines section 15072(e), "transportation facilities" could include transit maintenance yards or operations centers. In addition, the definition of transportation facilities includes rail transit service within 10 miles of the project site, which is inconsistent with the proposed added language referring to facilities within one-half mile of the proposed project. However, consultation is critical for projects near major transit stops (including transit stations), whose capacity may be adversely affected by increased development and population growth near that stop. CEQA Pub. Res. Code Section 21064.3 already provides a clear definition of major transit stop, and we propose using that definition here.

The third change BART requests is that "should" be changed to "shall". Absent the imperative, lead agencies would remain free to not consult with transit agencies. Appendix G, Section XVII, already identifies conflict with a plan, ordinance or policy addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian paths as a significant environmental impact under CEQA. Courts have consistently supported such requirements as consistent with existing statute. (See *City of San Diego v. Bd. of Trustees of Cal. State Univ.* (2011) Cal. App. 4<sup>th</sup> 1134, appeal pending on other grounds, invalidating the EIR certification for failure to adequately consider impacts on the local transit system.) Consultation with transit agencies is necessary to identify such inconsistencies and ensure avoidance or mitigation of significant impacts.

BART suggests the following revisions to Section 15072(e):

"For projects that are not of statewide, regional, or areawide significance[t]he lead agency shall ~~should~~ also consult with public transit agencies with major transit stops, as defined in Section 21064.3 of the Public Resources Code, facilities within one-half mile of proposed projects."

7) Revise § 15082(c)(2) regarding consultation with Transit Agencies

BART suggests adding a subsection 15082(c)(2)(E) to include consultation with public transit agencies to the scoping provision, Section 15082(c), to ensure that public transit agencies are apprised of proposed projects from the outset and have the opportunity to participate in the scoping process. This is consistent with CEQA, Pub. Res. Code Section 21083.9(b)(4), which requires notice of scoping meetings to public agencies with transportation facilities consulted pursuant to Pub. Res. Code Section 21092.4. As noted above, noticing is critical for projects near major transit stops that may be affected by nearby projects. BART suggests the following additional subsection (E):

Section 15082(c):

"(1) For projects of statewide, regional, or areawide significance pursuant to Section 15206, the lead agency shall conduct at least one scoping meeting. A scoping meeting held pursuant to the National Environmental Policy Act, 42 USC 4321 et seq. (NEPA) in the city or county within which the project is located satisfies this requirement if the lead agency meets the notice requirements of subsection (c)(2) below.

(2) The lead agency shall provide notice of the scoping meeting to all of the following:

(A) any county or city that borders on a county or city within which the project is located, unless otherwise designated annually by agreement between the lead agency and the county or city;

(B) any responsible agency;

(C) any public agency that has jurisdiction by law with respect to the project;

(D) any organization or individual who has filed a written request for the notice;

(E) any public transit agency with a major transit stop, as defined in Section 21064.3 of the Public Resources Code, within one-half mile of the proposed project."

8) Revise § 15086(a)(5) regarding consultation with Transit Agencies

BART requests that the last sentence be revised to be consistent with the BART's suggested Section 15072(e) language: "For projects that are not of statewide, regional, or areawide significance[t]he lead agency shall ~~should~~ also consult with public transit agencies with major transit stops, as defined in Section 21064.3 of the Public Resources Code, facilities within one-half mile of proposed projects."

9) Revise § 15125(a)(2) regarding use of historic conditions

The proposed Guidelines Section 15125(a)(2) which allows a lead agency to use either a historic conditions baseline or a projected future conditions baseline as the sole baseline for analysis if the agency demonstrates with substantial evidence that use of existing conditions would be misleading or without informative value to decision-makers and the public, conflicts with the holding in the November 2017 *AIR v. Kern County* case. In *AIR v. Kern County* the Court found that the evidentiary standard requiring substantial evidence that the use of existing conditions would be misleading or without informative value only applies to use of a projected future conditions baseline, not a historic conditions baseline. BART suggests CNRA revise Section 15125(a)(2) to reflect current law, by removing "either a historic conditions baseline" and instead limiting the heightened evidentiary standard in the section to only apply to the use of projected future conditions baseline as decided in *AIR v. Kern County*.

"(2) A lead agency may use ~~either a historic conditions baseline or~~ a projected future conditions baseline as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record."

10) Revise §15126.4(a)(1)(B), regarding Mitigation Measures proposed to minimize significant effects

BART supports the additions to the section that allow deferral of specific details of mitigation measures when impractical or infeasible to include those details during the project's environmental review. However, requiring an agency to meet all three requirements: "(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure...", before it can defer the specific details of mitigation measures is in conflict with case law. *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899 and *Defend the Bay v. City of Irvine* (2004) 119 Cal. App.4th 1261 hold that either requirement (2) (performance standards) **or** requirement (3) (list of potential actions) is enough to allow an agency to defer the specific details of mitigation measures.

The CNRA's January 26, 2018 Initial Statement of Reasons regarding the proposed CEQA Guidelines amendments cites to these two cases on page 42 to indicate that: "these changes clarify that when deferring the specifics of mitigation, the lead agency should either provide a list of possible mitigation measures, **or** adopt specific performance standards."

BART suggests that the additions to Section 15126.4(a)(1)(B) be revised to allow the agency to meet the first requirement and either the second **or** third requirements as follows:

"The specific details of a mitigation measure, however, may be deferred when it is impractical or infeasible to include those details during the project's environmental review and the agency (1) commits itself to the mitigation; and (2) adopts specific performance standards the mitigation will achieve, or (3) lists the potential actions to be considered, analyzed, and potentially incorporated in the mitigation measure."

11) Revise § 15182 regarding Transit-Oriented Development

In an effort to reduce the environmental review requirements for transit-oriented development (TOD), proposed changes to Section 15182 exempts several types of development near existing or planned major transit stops from further CEQA review. However, BART points out that just because a development is near transit does not necessarily make it transit-oriented. In particular, developments with significant amounts of parking are not transit-oriented. BART suggests the addition of a subsection 15182(b)(1)(D):

15182(b)(1)(D): "If the project has parking greater than the minimum required by the local jurisdiction or lead agency, or one space per residential unit or two spaces per 1,000 square feet for other projects, whichever is greater, then the project will no longer benefit from this exemption."

12) Revise § 15301 Existing Facilities Exemption

BART's comments on the amendments to the CEQA Guidelines Section 15301, Existing Facilities Exemption are as follows:

The Guidelines revisions have added examples of projects qualifying for the existing facilities categorical exemption, which BART fully supports and applauds. BART suggests the following additional clarifications. In the existing Guidelines section 15301(a), "interior or exterior alterations" are already included as eligible for an exemption, but examples of exterior alterations are not provided. Similar to "interior alterations," examples of qualifying exterior alterations should be provided.

Such a clarification would provide greater certainty for BART and other transit agencies that small, minor alteration projects to modernize aging transit stops may be undertaken without extensive CEQA review. Such improvements include installing LED, energy-efficient lighting in our stations and parking lots, reconfiguring vehicle circulation patterns to permit more non-motorized travel (bicycle paths, safety bollards that convert vehicle ingress/egress areas into protected pedestrian paths), energy-efficient travel (EV-vehicle charging stations) in our parking lots, and the installation of security cameras systemwide to ensure the personal safety and security of our passengers. Clarifying that such projects are indeed categorically exempt from CEQA review will enable BART to keep pace with the times and quickly deliver small modernization improvements incrementally, as technology evolves. BART suggests the following revisions:

15301(a): "Interior and exterior alterations involving such things as interior partitions, plumbing, escalators, elevators, and electrical conveyances; and exterior alterations including such things as window replacement, landscaping, lighting, signage, and pedestrian amenities."

15301(c): "Existing highways and streets, sidewalks, gutters, existing parking facilities, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety, and other alterations such as the addition of bicycle facilities, including but not limited to bicycle parking, bicycle-share facilities and bicycle lanes, pedestrian crossings and amenities, street trees, safety improvements such as bollards, planters, sensors, cameras and gates, and other similar improvements that do not create additional automobile lanes)."

### 13) Revise Appendix G: Section XI, Land Use and Planning

The current language in Appendix G, Item XI(b) asks if the project would: "Conflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?"

The revised language asks if the project would: "Cause a significant environmental impact due to a conflict with any land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect?" According to the Initial Statement of Reasons, the change is intended to simplify and refocus the question on environmental impacts of plan conflicts, rather than conflicts, which have no impacts, and to avoid redundancy with CEQA Guidelines Section 15125(d), which provides: "The EIR shall discuss any inconsistencies between the proposed project and applicable general plans..." However, the revision to Appendix G, Item XI(b) deletes the word "applicable." BART and other rail transit agencies with elected or appointed boards are exempt from local general plans and zoning regulations by state law; see Gov. Code Sections 53090 and 53091.

To clarify that the Appendix G question does not apply to inconsistency with plans, policies and regulations from which an agency is exempt by state law, and to remain consistent with Section 15125(d), the word "applicable" should be restored in the proposed revision to the Appendix G, Item XI(b).

### 14) Revise Appendix G: Section XVII, Transportation

Appendix G, section XVII(a) currently asks whether a project would "[c]onflict with a plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes and pedestrian paths?"

BART suggests a revision to this question to ask whether a project would "[d]iminish the safety, security, or performance of the circulation system including transit, roadways,



bicycle lanes and pedestrian paths, including adopted future improvements to the circulation system?"

As identified in the previous comment, BART does not have, and we suspect that many transit agencies do not have, formally adopted plans or policies that might be relevant to this checklist item. Thus, asking whether a project would conflict with any such plans or policies would not turn up any potential impacts on BART's operations. In addition, whether a project conflicts with a plan, ordinance, or policy is a land use issue and thus the question as currently phrased in Appendix G creates a threshold more appropriate for that impact area, not for transportation impacts when such plans and policies may not exist.

BART also suggests a revision to the question to include impacts to adopted future improvements to the circulation system. This would make it clear that consideration should be given not only to existing transit, roadways, bicycle lanes, and pedestrians paths, but also to adopted improvements that are far enough along in their development to be considered reasonably foreseeable under CEQA.

Thank you for your consideration and we look forward to working with CNRA to implement these suggested clarifying revisions in the CEQA Guidelines. BART also has recommendations to the Technical Advisory and will send them directly to staff as requested.

Sincerely,



Val Menotti,  
Chief Planning and Development Officer

cc: S. Graham  
M. Wilke  
B. Powers